IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

Raghunath Singh vs. State of Rajasthan & Ors.
(S.B.C.Writ Petition No.237/02)

Dated:- 24th July, 2006

PRESENT

HON'BLE MR.JUSTICE MOHAMMAD RARIQ

Mr.R.S.Saluja, for the petitioner.
Mr.Rameshwar Dave,Dy.G.A. for the State.

The petitioner in the present writ petition has challenged the validity of the order dated 6.11.1998 whereby he was awarded penalty of stoppage of one grade increment and the orders dated 24.4.1999 and 25.10.2000 rejecting his appeal and review petition respectively .

The petitioner was served with a charge-sheet on 27.2.1996 under Rule 16 of the Rajasthan Civil Services (C.C.A.) Rules, 1958 (in short “the Rules of 1958). The charges against him were that when he was posted as Incharge of Police Chowki, Rayla of Police Station,Banera in District Bhilwara, a Tata chesis was seized by Investigating Officer in police case No.108/95 registered for offences u/s 279 and 337 IPC. While the chesis was lying in the said Chowki, all its four tyres and discs were stolen owing to negligence of the petitioner. Another charge against the petitioner was that even after having come to know about seizure of chesis, no steps were taken by him to ensure its safety or security nor deputed any personnel for the purpose of its

safety. Resultantly, all four tyres of the said chesis including their discs were stolen. Third charge against him was to the effect that even though four tyres and discs of the said chesis were stolen in the night on 1st October, 1995 but entry to that effect was made in Roznamcha in the morning of the following day i.e. 2nd October, 1995. The petitioner submitted reply to the charge vide Annexure 5 annexed with the writ petition. In reply, he denied the charges and stated that neither it is evident from the Roznamcha Rapat 101.103 dated 1.10.95 nor it is proved from the Roznamcha Aam dated 1.10.95 of the Police Station, Banera that after seizure of the Chesis, where was it kept and who was given the responsibility of its safety and security. No such entry was even made in the Malkhana. Seizure of the said Tata chesis was made by A.S.I. Karan Singh and he was responsible for safety of the said chesis. The chesis was seized by A.S.I. Karan Singh during investigation of F.I.R.No. 108/95 on 8.7.1995 and Karan Singh remained posted at Police Chowki, Rayala till 17.7.1995. If the vehicle was lying in open without being parked in the Chowki, it was Karan Singh who should be held responsible for the said negligence. He alleged that said Tata chesis in fact was not brought to police chowki but was lying in `Jungle'. Petitioner has further stated that when he was not handed over the charge of the Tata chesis, he cannot be made responsible for theft of its tyres and discs.

The Superintendent of Police, Bhilwara who was Disciplinary Authority, appointed Reserve Inspector as Enquiry Officer in the matter. In the report, he found the charges proved against the petitioner. The Disciplinary Authority vide Annexure 8 awarded the penalty

of stoppage of one grade increment with cumulative effect. Feeling aggrieved thereby, the petitioner preferred an appeal before the Dy. Inspector General of Police, Ajmer, who by order dated 24.6.1999 dismissed the Same. Not being satisfied with the of rejection of his appeal, the petitioner further preferred a review petition before His Excellency the Governor of Rajasthan under Rule 34 of the Rules of 1958 which too was dismissed vide order dated 25.3.2000. Hence the present petition.

The respondents have contested the matter and filed reply to the writ petition. It has been contended in the reply that the petitioner was Incharge of the Police Chowki, Rayala. Even though, Tata chesis was parked in the Chowki, petitioner did not take any steps to either get the same deposited in the malkhana or to appoint any police personnel for its safety . On transfer of A.S.I. Karan Singh, the petitioner assumed charge of Incharge of Chowki on 17.7.1995 and the incident of theft has taken place on 1.10.1995 i.e. after a period of 75 days .

I have heard the arguments advanced by the learned counsels and perused the record.

Learned counsel for the petitioner has argued that neither the Disciplinary Authority nor the Appellate Authority has taken into account that on the day of the theft, the petitioner was posted at Chauth Mela Festival location of which was at a distance of 26 kms. from the Police Chowki. He was directed for proceeding to beat on Highway by his superior officers. Therefore, if theft is taken place in his absence, he

cannot be held responsible. He has argued that there was no evidence on record to show that the petitioner had ever taken charge of the said Tata Chesis and therefore, no negligence could be attributed to him if its tyres and discs have been stolen. He has argued that orders passed by the Disciplinary Authority as also by the Appellate Authority and the Reviewing Authority are not speaking orders. In fact, the petitioner has been penalised for the fault of A.S.I. Karan Singh who did not take care to entrust properly the said chesis to the care of responsible police personnel.

Learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in the case of Kuldeep Singh vs. Commissioner of Police & Ors., reported in 1999 S.C.C.(L&S) p.429 wherein the scope of interference in disciplinary matters has been explained. In para 6 of the judgment, the Hon'ble Supreme Court observed as under :-

> "6. It is no doubt true that the High Court under Article 226 of this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the enquiry officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the appellate authority. But this does not mean that in no circumstance can be the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well as it can interefere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictates of the superior authority."

Learned counsel also relied upon a recent judgment of this

Court in Ugam Vs. State of Rajasthan (S.B.Civil Writ Petition No.1997/02, decided on 24.4.2005) wherein on the facts of that case order passed by the Disciplinary Authority was held to be non-speaking .

Mr.Rameshwar Dave, learned Dy.Government Advocate appearing on behalf of the respondents has argued that the petitioner was Incharge of the Police Chowki, Rayala. Even though, Tata chesis was parked in the Chowki, petitioner did not take any steps to either get the same deposited in the malkhana or to appoint any police personnel for its safety . On transfer of A.S.I. Karan Singh, the petitioner assumed charge as Chowki Incharge on 17.7.1995 and the incident of theft took place on 1.10.1995. He has also argued that the order passed by the learned Disciplinary Authority as also by the Appellate Authority are fairly the detailed one. His Excellency the Governor has already taken a lenient view by partly allowing the review petition in asmuch as the petitioner has been granted the benefit of salary and allowances even for the period of suspension. Learned counsel for the respondent has argued that sufficient evidence was available before the Inquiry Officer and the Disciplinary Authority to support their findings of guilt against the petitioner and that this was not a case of no evidence. It was stated that none of the principles of natural justice have been violated.

Learned counsel in support of his case has relied upon a judgment of this Court in Sushil Jha & Ors. vs. Union of India & Ors, reported in 2000(2) WLC(Raj.) p.183 wherein the learned Single Judge of this Court on analysis of several Supreme Court judgments including that of Kuldeep Singh (supra) observed in para 24 as under :-

> "24.The principles that may be deduced from the above references may be summarised thus-
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> (i) the High Court under Article 226 of the Constitution should not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the enquiry officer as a matter of course.
> (ii) The High Court cannot sit in appeal over those findings and assume role of the appellate authority, but where the finding is utterly perverse the High Court can always interfere with the same.
> (iii) the findings may be said utterly perverse, where there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man.
> (iv) The findings can be interfered with where punishment is shockingly disappropriate.

I have given my thoughtful consideration to the arguments advanced by both the learned counsels and examined the record.

In my view, a careful reading of Annexure 6 which was passed by the Disciplinary Authority make it clear that even though the Disciplinary Authority was concurringt with the findings recorded by the Inquiry Officer, yet it has discussed the evidence of as many as 12 prosecution witnesses who were examined before the Disciplinary Authority by the department and thereafter has proceeded to give his analysis on each of the charges as required by Rule 16(6) of the Rules of 1958. The Disciplinary Authority has also held that the petitioner was Incharge of the Chowki and therefore he was fully responsible for safety and security of the said chesis which was parked in the Chowki. He was responsible for deputing police personnel for its safety . On his failure to

do so, the incident of theft of four tyres and discs of the Chesis took place. In fact, the Disciplinary Authority also noted that the entry with regard to the vehicle was made for the first time on 2nd October, 1995 which appears to have been done by the petitioner to built up a defence for himself. In making analysis of evidence recorded during the inquiry, the Disciplinary Authority considered the entire record including the documents submitted by the petitioner as also the representation submitted by him against the inquiry report. Since in the present case there is a detailed discussion of evidence in the penalty order, I am not inclined to accept the arguments of the learned counsel for the petitioner that this is not a speaking order. I have also gone through the order dated 24.4.1999 whereby the appeal of the petitioner was rejected by the Dy. Inspector General of Police,Ajmer Range,Ajmer. The Appellate Authority while concurring with the view taken by the Disciplinary Authority has passed an order which runs into three pages. The Appellate Authority did not find any error in the order of the Disciplinary Authority and thus rejected the appeal . Thereafter, when the petitioner filed review petition, the reviewing authority has again considered his arguments and vide order dated 25.10.2000 partly allowed the review petition while maintaining the order of penalty of stoppage of one grade increment with cumulative effect. This order cannot be described as a non-speaking order.

It is trite law that when there is some legal evidence which may reasonably support the findings recorded by the Inquiry Officer, then adequacy or reliability of evidence cannot be subject matter of examination by this Court. This court in exercise of its power

under Article 226 of the Constitution of India cannot act as an appellate forum against the order of penalty. It can interfere with the decision of the disciplinary authority only if it finds that such authority has failed to observe the principles of natural justice or any statutory provisions prescribing the mode of such inquiry has been violated or the decision of the authority is vitiated by considerations extraneous to the evidence or the conclusions arrived at by such authority are so arbitrary that no reasonable person could have reached to such conclusions.

For the reasons mentioned above, the writ petition is dismissed. There shall be no order as to costs.

(MOHAMMAD RAFIQ),J.